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HIGH COURT OF CHHATTISGARH: BILASPUR

S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J

CIVIL REVISION NO. 36/2006

PETITIONER: Manoj Singh Thakur, S/o. Bairam Singh Thakur, aged about 29 years, r/o. Santoshi Chowk, Kushalpur, Raipur, Dist. Raipur (CG).

Versus

RESPONDENTS

1. Ramesh Singh Thakur, S/o Late Manrakhan Singh Thakur, aged 45 years, R/o Vaman Rao Lakhe The Ward, Adarshnagar, Kushalpur, Distt. Raipur (CG)
2. Collector/District Election Officer, Raipur, Distt.Raipur (CG)
3. Anand Ram Sahu, S/o.Ramdeen Sahu, aged 42 years, R/o Sahupara, Kushalpur, Distt.Raipur (CG)
4. Jainarayan Jalkshatri, S/o. Tiharu Ram Jalkshatri, aged 36 years, R/o above Kho-Kho Pond, Kushalpur, Distt.Raipur (CG)
5. Mukesh Sharma, S/o. Uday Ram Sharma, aged 32 years, R/o. Indira Chowk, Kushalpur, Distt.Riapur (CG)
6. Munna Thakur, S/o. Shri Gulab Singh Thakur, aged 36 years, R/o. Near Durga Mandir, Hanuman Chowk, Kushalpur, Riapur (CG)
7. Dinesh Agrawal, S/o. Janak Agrawal, aged 36 years, R/o. Indira Chowk, Raipur (CG)
8. Rajendra Yadav S/o.Jagdish Yadav, aged 32 years, R/o.Danteshwari Nagar, Kushalpur, Distt.Raipur (CG)

PRESENT:

Shri Rajeev Shrivastava with Shri Indrasen Sahu, Counsel for the petitioner.

Shri B.P. Sharma, counsel for respondent No.1.

Shri P.K. Verma, Sr. Advocate with Shri Raghawendra Verma, counsel for respondent No.2

Shri Sandeep Dubey, counsel for respondents No. 3 and 7.

Shri A.P. Sharma, counsel for respondent No.6.

None for other respondents.

ORDER

(Passed on 14/12/2006)

This revision under Section 441-F of the Chhattisgarh Municipal Corporation Act, 1956 (henceforth, "the Act") is directed against the judgment dated 14/02/2006 passed by District Judge, Raipur, in Election Petition No. 6/2005, whereby learned District Judge dismissed the election petition filed under Section 441 of the Act, by the petitioner for declaration that the election of the returned candidate - respondent No.1 from Vaman Rao Lakhe Nagar Ward No.64 of Raipur, (henceforth, "the Ward") is void.

2) Notification for election of Councilor and Mayor of Raipur Municipal Corporation was issued by District Election Officer, Raipur, along with various stages of the elections and period during which those stages were scheduled i.e., 22/11/2004 to 29/11/2004 for filing of nominations, 30/11/2004 for scrutiny of nomination papers, 01/12/2004 to 02/12/2004 for withdrawal of nomination, 17/12/2004 for polling, 19/12/2004, for counting of votes and 24/12/2004 for declaration of the results of the elections in Chhattisgarh Gazette.

3) Petitioner, respondent No.1 and respondents No. 3 to 8 contested the election for the seat of Councilor of the Ward. Petitioner was candidate of Indian National Congress (henceforth, "Congress") whereas respondent No.1 was nominated by Bharatiya Janata Party (henceforth, "BJP"). After completion of election, results were declared and accordingly respondent No.1 was declared as returned candidate for the Ward.

4) Petitioner, who lost the election, filed election petition under Section 441 of the Act, for declaration of election of respondent No.1, who was a returned candidate from the Ward to be void, *inter alia* on the grounds that respondent No.1 committed corrupt practice, prior to the date of polling, petitioner distributed voters' slip containing his photograph and election symbol amongst the voters, misused Government machinery for getting forged votings in various booths and erroneous counting of votes, took help of his relative Surendra Singh Thakur, who was appointed as Polling Officer on duty at Polling Booth No.470(A), the ruling government helped him by constructing road, toilet and drainage in the Ward during operation of "Code of Conduct" and the canvassing material distributed amongst the voters by respondent No.1 does not contain the name of printer, publisher and number of copies.

5) Respondent No.1 specifically denied all the allegations made against him by the petitioner. However, he pleaded that purporting voters' slip having two parts were used, canvassing materials used by him were got printed in accordance with the instructions of Election Commission which bears name and address of printer, publisher and number of copies. Respondent No.2, who is an Election Officer has stated in his reply that election was conducted in fair and independent manner, no incident of forged voting took place and counting was done in

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presence of contestants or their agents, even no application for recounting has been received. Respondents No. 3 and 8 have denied the allegations made by the petitioner. Respondent No. 4 remained ex parte and did not file his written statement. Respondents No. 5 and 6 partially conceded the allegations made by the petitioner whereas respondent No.7 in his reply pleaded that petitioner has to prove his case.

6) Petitioner and respondent No. 1 in support of their cases adduced oral and documentary evidence. Learned lower Court after affording proper opportunity of hearing and after appreciation of the evidence held that petitioner failed to prove allegations regarding corrupt practice adopted by respondent No.1, therefore, vide impugned judgment dismissed the election petition.

7) Section 441-B of the Act, which reads as below, envisages grounds for declaring election to be void:

> ***"441 – B .Grounds for declaring elections or [nominations] to be void. -*** *(1) Subject to the provisions of sub-section (2) if the Court is of the opinion –*
>
> *(a) that on the date of his election or [nomination] a returned candidate was not qualified or was disqualified, to be chosen as a [Mayor or a Councillor: or*
>
> *(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or*
>
> *(c) that any nomination paper has been improperly rejected; or*
>
> *(d) that the result of the election or [nomination], in so far as it concerns] a returned candidate has been materially affected –*
>
> *(i) by the improper acceptance of any nomination; or*

(ii) *by a corrupt practice having been committed in the interest of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent; or*

(iii) *by the improper acceptance or refusal of any vote or reception of any vote which is void; or*

(iv) *by the non-compliance with the provisions of this Act or of any rules or orders made thereunder save the rules framed under [section 14] in so far as they relate to preparation and revision of list of voters;*

(2) if in the opinion of the Court a returned candidate has been guilty by an agent of any corrupt practice, but the Court is satisfied --

(a) that no such corrupt practice was committed at the election or [nomination]by the candidate, and every such corrupt practice was committed contrary to the instructions, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election or [nomination]; and

(c) that in all other respects the election or [nomination] was free from any corrupt practice on the part of the candidate or any of his agents;

then, the Court may decide that the election or [nomination of the returned, candidate is not void.

8) Section 441-H of the Act, which is reproduced as below, describes corrupt practice.

***441 – H. Corrupt practices.** – The following shall be deemed to be corrupt practices for the purposes of this Act :-*

(i) Bribery as defined in clause (1) of section 123 of the Representation of the

People Act, 1951 (43 of 1951).

(ii) Undue influence as defined in clause (2) of the said section.

(iii) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, national symbols such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

(iv) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false, or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being statement reasonably calculated to prejudice the prospects of that candidate's election.

(v) The hiring or procuring whether payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent for the conveyance of any elector (other that the candidate himself, the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act;

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel s hired is a vehicle or vessel not propelled by mechanical power :

Provided further that the use of any public transport vehicle or vessel or any tram car or railway carriage by an elector at his own cost for purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this cause.

Explanation .- In this clause the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(vi) The holding of any meeting in which intoxication liquors are served.

(vii) The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.

[(vii – a) the incurring or authorizing of election expenditure in excess of the amount prescribed under Section 14 – A.]

(viii) Any other practice which the State Government may prescribe by rule to be a corrupt practice.]

9) Section 441(5) of the Act reads as below which provides the particulars required to be furnished in Election Petition.

"441 (5) An election petition shall --

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) with sufficient particulars, set forth the ground or grounds on which the election or [nomination] is called in question;

(c) be signed by the petitioner and verified in the manner prescribed in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings."

10) Section 441-F of the Act is reproduced as below which contemplates finality of the decision, interference by the High Court and the ground for interference by the High Court in revision.

(6)

> ***441 – F. Finality of decisions.*** *– (1) No appeal shall lie against the decision of the Court on petition.*
>
> *(2) Any person aggrieved by the decision of the Court on the petition may within thirty days from the date of such decision apply to the High Court for revision on any of the following grounds --*
>
> *(a) that the decision is contrary to law;*
> *(b) that the Court has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction vested in it by law;*
>
> *but subject to such orders as the High Court may pass thereon, such decision shall be final.*

11) A very limited jurisdiction has been vested with the High Court under Section 441-F of the Act, if the decision of the District Court is contrary to law or if the Court illegally exercised its jurisdiction, only in those cases High Court can interfere with the order passed by the District Court in its revisional jurisdiction.

12) So far as depriving voters from their franchise of tendered vote is concerned, particulars of those voters have not been given in the petition. So far as challenging of identity is concerned, sufficient particulars are missing and regarding re-counting what attempts were made by the petitioner has also not been described by him in his petition. Therefore, in absence of material sufficient particulars petitioner was refrained from challenging false or forged voting or recounting. Even otherwise, learned District Judge after appreciation of the legal evidence has recorded his findings and those findings are not perverse. Therefore, so far as allegations regarding forged voting or illegal counting is concerned, that cannot be looked into by this Court in its revisional jurisdiction.

13) Appointment of Presiding and Polling Officer is governed by Rule 17 of M.P. Nagarpalika Nirvachan Niyam, 1994 and only restriction is that the person appointed shall not be a person who is not in the employment of State Government or local authority or a public undertaking. Even otherwise, if the petitioner has any grievance against appointment of Surendera Singh Thakur as Polling Officer, he should have raised the same much before the Election. From the evidence adduced by both the parties, it is clear that neither Surendra Singh Thakur is a family member of respondent No.1 nor he is his near relative, on the other hand, from the statement of petitioner Manoj Singh Thakur (PW/1) himself, it has been established that Surendra Singh Thakur is related to him instead related to respondent No.1, therefore, the question of mal-practice played by him in favour of respondent No.1 does not arise.

14) So far as construction of road, toilet and drainage from 14/12/2004 to 16/12/2004 are concerned, petitioner did not allege that those constructions were approved during the operation of Code of Conduct and construction work started during those periods, therefore, the work if already approved and allotted to any contractor, that cannot be stopped in the garb of election, so as to deprive people from its enjoyment. Therefore, in absence of specific and complete pleading, government machinery was misused by the respondent No.1 that cannot be accepted. Learned District Judge considered the evidence adduced by both the parties and held that petitioner failed to establish that respondent No.1 after enforcement of Code of Conduct did construction work in the Ward. The finding recorded by learned lower Court is based on legal evidence and there appears no perversity in appreciation of the evidence so as to condemn it.

15) Respondent No.1 in his written statement has admitted that he distributed voters' slips that was purporting having first part the details of contestant and other part the details of voters. He also stated that he got printed canvassing material that was in accordance with the guidelines issued by the Election Commission having name and address of printer, publisher and number of copies.

16) Learned counsel for the petitioner contended that Ex. D/4, D/5 & D/6 filed by respondent No.1 on his own admission were proved. He placed his reliance in the judgment rendered by the Hon'ble Apex Court in **United India Insurance Co. Ltd., and another Vs. Samir Chandra Choudhary, reported in (2005) 5 SCC 784** wherein Hon'ble the Apex Court held that until presumption raised by the admission is rebutted, the fact admitted must be taken to be established. Ex. D/4, D/5 and D/6 are the documents filed by respondent No.1 who according to his written statement has admitted those documents. Learned counsel for the petitioner contended that these documents did not fulfill the requirement of law and according to Section 441-H (vii) of the Act, issuance of these documents falls within the category of corrupt practice.

17) Exs. D/4 and D/5 are printed canvassing materials carrying a request to vote in favour of Sunil Soni and Ramesh Singh Thakur. Therefore, both these documents fall in the category of circular. Ex. D/4 bears the name and address of printer as well as publisher and also bears number of copies. In Ex.D/5, name of printer, his phone number and copies issued have been disclosed and in place of publisher the word "Solicit" (Vineet) by BJP has been mentioned. The rule prescribes that circular must contain the name and address of printer and also who got it published. In both these documents name and address of printer with

number of copies are borne. So far as publisher is concerned, in Ex-D/4 published by BJP has been printed and in Ex-D/5 instead of publisher, prayed by BJP, this has been printed. Therefore, both these documents published by BJP, bear the name and address of publisher. Documents are read as a whole to correctly interpret them, only missing of a word does not bring any document in a different category unless that "word" alone has decisive force to determine its category. Here in the instant case, both these documents which fall within the category of circular, in fact, bears the name and address of the printer and publisher though terminology in Ex-D/5 has been different. Therefore, so far as Ex-D/4 & D/5 are concerned, they are not used in violation of Section 441-H (vii) of the Act.

18) In Black's Law Dictionary the meaning of '*placard*' has been given, which reads as below :

> "**Placard** (**plak**-ahrd or **plak**-ərd). **1.** *Hist.* An official document, such as a license or permit.
>
> **2.** An advertisement posted in a public place."

19) Ex-D/6 does not fall within the category of circular, placard or poster, but this is a voter slip required to be issued at the time of polling to the concerned voter for his identification and identical to it has been used by the petitioner himself i.e. Ex-D/2. The requirement of Section 441-H (vii) of the Act, does not apply to Ex-D/2 or Ex-D/6. So far as documents Ex-D/3, D/4 & D/5 are concerned, it was not established that respondent No.1 committed corrupt practice by using these documents.

20) Even law as envisaged under Section 441-B (2) of the Act contemplates that if court is satisfied that in all respects the election or nomination was free from any corrupt practice on the part of the candidate

or any of his agents, then the election cannot be declared to be void. Here in the instant case, if for the sake of arguments it may be accepted that Ex. D-2 or D-6 do not fulfill the complete requirement of Section 441-H (vii) in that case also these documents do not carry such material which may be prejudicial to other contestants or having force to influence voter, or materially affect the election, therefore, undoubtedly the election was fair and was not liable to be declared void. Technicalities have no room to cancel election of a returned candidate until it is proved that it adversely affected the result of election and that is not the case here.

21) Learned lower Court after due appreciation of evidence did not find allegation leveled against respondent No.1 proved and there is no material to establish that his findings are perverse. So far as admitted documents (Ex-D/4, D/5 &D/6) are concerned, it is clear that there is no violation of Section 441-H (vii) of the Act, even otherwise, these materials were not such which may adversely affect the result of election or bring them within edifice of corrupt practice.

22) During arguments no other points have been raised.

23) In view of the above, neither the findings of the lower Court are contrary to law, nor the trial Court committed any illegality or failed to exercise its jurisdiction.

24) In the result, the revision fails and same is accordingly dismissed.

Parties to bear their own costs.

Sd/-
V.K.Shrivastava
Judge

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